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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 348.

ABRAHAM J. ISSERMAN,
Petitioner,

vs.

ETHICS COMMITTEE OF THE ESSEX COUNTY BAR ASSOCIATION,
Respondent.

BRIEF FOR RESPONDENT.

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BRIEF FOR RESPONDENT.

Statement.

Petitioner, Abraham J. Isserman, was admitted as an attorney-at-law of the State of New Jersey in the June 1923 Term of the New Jersey Supreme Court, and as a counsellor-at-law in the October 1926 Term of said Court (R. 1).

(a) Federal court proceedings:

At the conclusion of the trial of the 11 communist leaders on October 14, 1949 in the United States District Court for the Southern District of New York (*United States* v. *Foster, et al.*, 83 F. Supp. 197 (1949); on appeal, *United States* v. *Dennis, et al.*, 183 F. 2d 201 (C. A. 2nd Cir., 1950); 341 U. S. 494 (1951)) Isserman, who represented several

defendants, was adjudged guilty of criminal contempts of court by the Honorable Harold R. Medina, D. C. J., for his contemptuous conduct during the course of said trial. The Order on Contempt, dated October 14th, 1949, in part, reads:

> "It is Adjudged that the defendant is guilty of contempts of court as specified in the accompanying certificate, to wit: Specifications I, VI, VII, XII, XXVII, XXXI, XXXII.
>
> "It is Adjudged that the defendant is sentenced to imprisonment for a period of four months on each contempt, and that the aforesaid sentences shall be served concurrently."

The Contempt Certificate, pursuant to Rule 42(a), Federal Rules of Criminal Procedure, is reported in full in the appendix to *United States* v. *Sacher*, 182 F. 2d 416 (C. A. 2nd Cir., 1950), starting at page 430.

The criminal contempt convictions were affirmed, except as to Specification I, and certiorari denied (341 U. S. 952 (1951)). Subsequently, reargument was granted (342 U. S. 858 (1951)) and the criminal contempt convictions were again affirmed on March 10, 1952 (343 U. S. 1).

(b) State court proceedings:

By notice personally served on him in New York City, Isserman was requested to appear on November 3, 1949, before the Ethics Committee of the Essex County Bar Association (which committee is now known and designated as the Essex County Ethics and Grievance Committee). He did not appear in person, but was represented by counsel, who sought a continuance until the disposition of

his appeal from the criminal contempt convictions in the Court of Appeals, Second Circuit. The Committee (R. 1) forwarded a copy of the Order on Contempt and the Contempt Certificate, together with such documents as were offered in evidence by Isserman's counsel, to the State Supreme Court "for such action, if any, as it may deem necessary and proper under the circumstances."

Not until after the affirmance of petitioner's criminal contempt convictions by the Court of Appeals, Second Circuit (182 F. 2d 416), did the State court issue and serve its order dated April 24th, 1950, returnable May 8, 1950, directing petitioner to show cause "why he should not be disbarred, or otherwise disciplined as this court may deem necessary and proper under the circumstances" (R. 2). Further action was again held in abeyance pending the determination by the Supreme Court of the United States of petitioner's application for a writ of certiorari to review his criminal contempt convictions. Upon certiorari being denied (341 U. S. 952) the State court issued another order, dated June 7, 1951, returnable June 18, 1951 (R. 3), directing Isserman to show cause why he should not be disbarred or otherwise disciplined. Petitioner filed an Answer (R. 4) and a Notice of Motion for a further continuance (R. 7). After the matter was fully heard and argued in open court on the return date, June 18th, 1951, the show cause order was continued until disposition of his application for re-argument in the Supreme Court of the United States, and pending such disposition he was suspended from the practice of law in New Jersey (R. 4).

On March 10, 1952, the Supreme Court of the United States affirmed petitioner's conviction (343 U. S. 1) and

after notice the matter was again fully heard and argued in open court on March 17th, 1952, and the State court on March 24th, 1952, in an opinion (R. 21) by Mr. Chief Justice Vanderbilt, (*in re: Isserman*, 9 N. J. 269, 87 A. 2d 903), determined to strike petitioner's name from the rolls of attorneys and counsellors-at-law of the State of New Jersey, and an appropriate order was entered (R. 30).

Petitioner filed a petition for re-hearing in the State court (R. 32). The State court denied his petition for re-hearing (R. 81) for the reasons stated in its opinion (R. 77) filed April 28, 1952 (*in re: Isserman*, 9 N. J. 316, 88 A. 2d 199).

(c) Prior disciplinary proceedings:

Petitioner was the subject of a report of the State Board of Bar Examiners, which recommended he be suspended for a period of two years in that, as stated *in re: Isserman*, 6 N. J. Misc. R. 146 (1928), 140 A. 253:

> "Isserman was convicted in the Court of General Quarter Sessions of Hudson County for a violation of the second clause of section 115 of the Crimes Act, in that he had carnal intercourse with the prosecutrix mentioned in the indictment, on June 7th, 1925. She was born on August 14th, 1909, and, therefore, on June 7th, 1925, she was still within the age fixed by the statute for the protection of female children against vice."

The State court concluded that he be suspended for a period of six months for the reasons stated in its opinion. Petitioner's petition for re-hearing (R. 51) alleges he was granted a full pardon by the Court of Pardons on October 9, 1953.

Constitutional and Statutory Provisions and Rules Involved.

The 1947 New Jersey Constitution, Art. 6, § 2, Par. 3:

"The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted."

New Jersey Revised Statutes 2:20-1 prior to its amendment, effective January 1, 1952 (N. J. S. 2A:13-1):

"Every counselor, solicitor or attorney at law, shall, before he is permitted to practice in any court of this state, take and subscribe in open court, the following oath:

'I, ..., do solemnly promise and swear, that I will faithfully and honestly demean myself in the practice of attorney (or of counselor or solicitor as the case may be), and will execute my office according to the best of my ability and understanding. So help me God.'"

The Rules of the Supreme Court of New Jersey:

Rule 1:7-6. Canons of Ethics.

"The Canons of Professional Ethics, and the Canons of Judicial Ethics, adopted by the American Bar Association and now in effect, shall govern the conduct of the judges and the members of the bar of this State . . ."

Rule 1:8-17. Residence; Unlawful Practice.

"(a) No attorney of this Court, not actually residing in this State, shall appear or act as attorney

of record in any cause in any of the courts of this State.

(b) No attorney or other person not residing in this State, or person not regularly licensed and enrolled, shall practice in the name of any attorney in this State, nor shall any attorney thereof permit another so to practice, on pain of being stricken from the roll."

Rule 1:9-5. Discipline and Disbarment.

"(a) Presentments, or affidavits presented to the court, directly for the purpose of obtaining an order to show cause why the name of an attorney should not be stricken from the roll shall not be filed without an order of the court; and no such order to show cause, if allowed, shall be actually entered until the court by special order so directs; and whenever such an order, not entered, shall be discharged, no entry thereof shall be made and no papers shall be filed.

(b) No person who shall be disbarred or suspended as an attorney-at-law shall, during the period of such disability, be permitted to practice as a counsellor-at-law."

Canons of professional ethics:

1. **The Duty of the Lawyer to the Courts.**

"It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such

cases, but not otherwise, such charges should be encouraged and the person making them should be protected."

29. Upholding the Honor of the Profession.

"Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice."

32. The Lawyer's Duty in Its Last Analysis.

"No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect to the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strict-

> est principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen."

ARGUMENT.

POINT I.

The requirements of due process are fully met by due notice and an opportunity to be heard, all of which were accorded the petitioner.

Petitioner alleges he was denied a hearing on the merits, an opportunity to offer evidence, and to be heard. Not so. An examination of the record will show he was heard on the merits and had ample opportunity to offer evidence. He personally never appeared before the Committee or the State Supreme Court. On the return date of each show cause order he was represented by counsel. His counsel was heard by the Committee, offered evidence, and on two occasions was heard by the State court, and any evidence proferred by him was received and considered.

Although petitioner was convicted on October 14, 1949, the first show cause order was returnable May 8, 1950 (R. 2), it was not until after the second show cause order (R. 3) was issued, returnable June 18, 1951, that petitioner

filed an answer (R. 4) and a 21-page brief, which concluded with the request that "The charges herein should be dismissed." That answer alleged petitioner was so busy attending to his clients' affairs that he was unable to adequately prepare his defense, and that "to compel respondent to proceed . . . would be to deny the respondent due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution, and to proceed against him by way of discipline under such circumstances would be to deprive him of property without due process of law as guaranteed by said amendment." It will be noted petitioner recognized the correctness of the State court's procedure and that he did not allege he was denied the opportunity to present evidence in his behalf but only desired a continuance to prepare his defense, and if such additional time was granted it would not be violative of due process. Additional time was granted in that the Order of Suspension (R. 4) continued the matter until the disposition of his application to this Court for reargument. It was not until after this Court finally affirmed the criminal contempt convictions that petitioner in his Amended and Supplemental Answer (R. 11), filed on March 17th, 1952, alleged he was denied a hearing and deprived of due process. The opinion of Mr. Chief Justice Vanderbilt (R. 21) in the State court fully sets forth the details of this protracted disciplinary proceeding, and is a complete answer in denial of petitioner's present contentions. Petitioner filed a petition for rehearing in the State Court (R. 32) and the allegations thereof are likewise fully and completely answered in the per curiam opinion (R. 77) of the State court denying rehearing.

Petitioner's conviction of criminal contempts under Rule 42(a), Federal Rules of Criminal Procedure, is a conviction of a criminal offense.

> *Pendergast* v. *United States*, 317 U. S. 412 (1942);
> *Fisher* v. *Pace*, 336 U. S. 155, 159-160 (1949);
> *United States* v. *United Mine Workers of Amer.*, 330 U. S. 258, 295 (1947).

Criminal contempts are offenses against organized society in that they impair the dignity and authority of the court, and tend to obstruct the due administration of justice, and tend to bring the court into disrepute and disrespect. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418 (1911); *Staley* v. *South Jersey Realty Co.*, 83 N. J. Eq. 300 (E. & A., 1914), 90 A. 1042. A criminal contempt is a public wrong; it is a misdemeanor. *Zimmerman* v. *Zimmerman*, 12 N. J. Super. 61 (App. Div., 1950), 79 A. 2d 59.

The State court had before it petitioner's record of conviction and in the exercise of its inherent and constitutional power to discipline one of its officers, after due notice and hearing, it judicially determined petitioner by reason of his conviction was no longer worthy or fit to continue as a member of the Bar of New Jersey.

To here grant petitioner a review of his disbarment by the State court would be tantamount to a review by this court of his conviction of criminal contempts, a review which heretofore has been fully accorded him by this court.

Further, to grant petitioner the review which he here seeks would be an open sesame for every disbarred lawyer to seek a like review. *Thompson* v. *State*, 35 S. E. 2d 306, 308, 72 Ga. App. 852; transferred 33 S. E. 2d 903; 199 Ga.

250, cert. den. 67 S. Ct. 44, 329 U. S. 714, 91 L. Ed. 620 (1946). Petitioner's guilt has been determined, and affirmed on appeal. He is not entitled to a retrial in the State courts, nor a retrial here.

Disciplinary proceedings need not comply with all the formalities of process or other trial procedure. The informality by which action is taken, the charges made, or notice is given to the attorney charged with misconduct, will not invalidate the proceedings. *In re: Claiborne,* 119 F. 2d 647 (C. A. 1st, 1941); *Ex parte Wall,* 107 U. S. 265 (1882); *Randall* v. *Brigham,* 74 U. S. 523, 540 (1868). Particularly is this so when the evidence against the attorney is entirely documentary. Here, petitioner had full knowledge of the entry and contents of the Order on Contempt and the Contempt Certificate, and all subsequent proceedings.

In *Randall* v. *Brigham, supra,* at page 540, the court said:

> "It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from his own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney, of the charges made, and opportunity afforded him for explanation and defense. The man-

> ner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation."

In *Ex parte Wall, supra*, at page 273, the court said:

> "It is laid down in all the books in which the subject is treated, that a court has power to exercise a summary jurisdiction over its attorneys to compel them to act honestly towards their clients, and to punish them by fine and imprisonment for misconduct and contempts, and, in gross cases of misconduct, to strike their names from the roll. If regularly convicted of a felony, an attorney will be struck off the roll as of course, whatever the felony may be, because he is rendered infamous. If convicted of a misdemeanor which imports fraud or dishonesty, the same course will be taken. He will also be struck off the roll for gross malpractice or dishonesty in his profession, or for conduct gravely affecting his professional character."

In view of the facts of this case, petitioner's disbarment by the State court was not in anywise arbitrary, without cause, or violative of due process.

POINT II.

Disbarment of an attorney by a State court is not an interference with any federal judicial function.

In paragraphs 5 and 6, petitioner contends his disbarment by the State court constitutes an interference with the federal judicial function in that if a hearing had been accorded him by the State court the latter would thereby be scrutinizing and supervising petitioner's conduct and his

obligation to the federal court and to his client in a federal case. This argument runs contra to his contention he was denied an opportunity to be heard, for now he states that had he been heard such hearing would be an unwarranted supervision of the conduct of members of the federal bar. The fallacy of the argument is apparent. The State court in disciplining members of its bar does not in anywise attempt to interfere with any federal judicial function. The State court has no concern with the disciplinary action taken, or to be taken, by the federal courts, either the District Courts, or the Supreme Court of the United States, or any federal administrative body, as a result of petitioner's disbarment by the State court. The fact that his admission to practice before the federal courts was predicated upon his admission to the bar of New Jersey, and that such right to practice in the federal courts, by its rules, will be terminated by his disbarment in New Jersey, is not a valid reason for this court to review the disciplinary proceedings in the State court. Nor, is such a disciplinary proceeding in any sense a supervision by the State court of petitioner's conduct in the federal courts. The admission to practice and the disciplining of its members is a function of and is under the control of each court, state or federal, acting independently, and is not an encroachment by one on the rights and duties of the other. As was said in *Bradwell* v. *Illinois*, 83 U. S. 130, 139 (1872), 21 L. Ed. 442:

> "... the right to control and regulate the granting of a license to practice law in the courts of a state is one of those powers which are not transferred for its protection to the Federal Government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license."

The right or license to practice law is not a "property right", nor is it a "privilege" or an "immunity" within the protection of the Fourteenth Amendment. *Brents* v. *Stone*, 60 F. Supp. 82 (D. C. E. D. Ill., 1945); *Emmons* v. *Smith* (D. C. Mich., 1944), 58 F. Supp. 869, aff'd 149 F. 2d 869, cert. den. 326 U. S. 746; *Mitchell* v. *Greenough*, 100 F. 2d 184, cert. den. 306 U. S. 659; *Bradwell* v *Illinois, supra*; *In re*: *Lockwood*, 154 U. S. 116.

In *Selling* v. *Radford*, 37 S. Ct. 377, 243 U. S. 46, 61 L. Ed. 585, Ann. Cases 1917D, 569 (Sup., 1917), petitioners, members of the Bar of Detroit, Michigan, sought respondent's disbarment in the United States Supreme Court. Respondent, admitted to practice before the United States Supreme Court based upon his admission in Michigan, was disbarred by Michigan, but respondent continued to hold himself out as a practicing lawyer claiming he was still a member of the Bar of the United States Supreme Court. The court held it had no authority to re-examine or reverse, as a reviewing court, the action of the supreme court of Michigan in disbarring a member of the Bar of the courts of that state for personal and professional misconduct.

Each court, state or federal, and each administrative body, before which an attorney is entitled to practice, acting separately and independently, has the right to determine for itself petitioner's fitness to continue practicing before it, and such determination is not in the sense of an additional punishment. Here, the State court determined that Isserman's fitness to continue as a officer of the State court had terminated in that:

> "* * * the nature of his conviction was so closely related to and so potentially destructive of the judicial process as to require a termination of his status as an officer of this court." (R. 80).

Petitioner would now have this court believe his criminal contempt convictions were based upon "a few brief occurrences" or "six relatively minor incidents". Neither the passage of time nor the petitioner's attempted minimizing and making light of his contumacious conduct before the trial judge should now blur the picture presented by the trial court's contempt certificate of petitioner's "obstructive tactics and impudent charges" (Judge Augustus N. Hand, 182 F. 2d 416, 430), "outrageous conduct", "crude antics" (Judge Frank, ibid. p. 454), and "abominable" resistance (Judge Clark, ibid. p. 463). These are not off-hand random comments, but are the considered conservative comments made by judges who reviewed the record, and as a result thereof have found petitioner's conduct, and those associated with him, lacking in that propriety and dignity which should characterize the conduct of a member of our honored profession.

Petitioner's conduct was characterized by Judge Hincks, D. C. J., after his examination of the entire 21 volume record in the *Dennis* case, in the following language:

> "As to Mr. Isserman, I find that as charged in Par. 14, he, too, improperly disregarded warnings of the court concerning time-consuming tactics by persistence in making long arguments and by the needless reiteration of objections by others. * * * Certainly this conduct involved reckless disregard of the need to avoid waste of trial time: the frequency of such conduct, on the whole, fairly warrants a conclu-

> **sion that it was in wilful disregard of the court's warning against unnecessary delays. Such is my finding. And the incident reported on pages 1134-5 of the record was insolent and provocative, I think intentionally so. * * *'' (*In the Matter of Sacher and Isserman*, Docket M19-66, not officially reported).**

and suspended Isserman from practicing in the Southern District of New York for a period of 2 years. It will be noted, however, such suspension was ordered prior to his disbarment in New Jersey, and prior to this Court's affirmance of petitioner's six convictions for contempt. The disciplinary action taken in the Southern District is neither binding nor controlling upon the State court. The petition filed by the New York bar associations in the Southern District of New York, as to Isserman's conduct, stated not only the six specific acts of alleged misconduct, but 23 additional instances of alleged misconduct. The joint answer which he and Sacher filed thereto Judge Hincks found:

> '' . . . contained no denial of the factual matter charged in the petition, in effect admitted that their conduct was as reported in the *Dennis* record and as charged in the petition, but left room for their contention that the conduct specified was not unprofessional or deserving of the disciplinary action sought by the petition. As to the direct charges of misconduct contained in Paragraphs 16 and 18, the respondents' answer contains no denial but only the assertion that the acts of misconduct charged as misconduct, though not denied, 'do not, in context, evidence unfitness on the part of either of the respondents for professional practice.' ''

Inasmuch as petitioner admits the contents of the *Dennis* record, he must likewise admit the contents of the contempt

hich was made up from the *Dennis* record. The
considered the contents of the contempt certifi-
idence submitted by petitioner before the Com-
tioner's answer, his amended and supplemental
petition for rehearing, and oral argument in
on two different occasions. The State court
petitioner's conduct merited disbarment. That
on as to the nature of the discipline to be im-
red from that of Judge Hincks is immaterial
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Conclusion.

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Dated: N ember 6, 1952.
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ETHICS COMMITTEE OF THE ESSEX COUNTY BAR ASSOCIATION.

Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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MOTION OF NATIONAL LAWYERS GUILD FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

MURRAY A. GORDON,
401 Broadway,
New York, N. Y.
Attorney for National Lawyers Guild.

Supreme Court of the United States

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MOTION OF NATIONAL LAWYERS GUILD FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The National Lawyers Guild respectfully moves this Court pursuant to Rule 27, paragraph 9, of the Rules of this Court, for leave to file a brief in this case as *amicus curiae.**

The National Lawyers Guild is a bar association of national membership which is and has long been dedicated to the aim, among others, of helping to defend constitutional rights and liberties.

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* Consent of the parties has been sought but the Respondent has refused its consent.

The incidents upon which the order of disbarment in this case must rest are patently free of the taint of moral turpitude or venality which ordinarily provides the basis for such orders. The incidents themselves have been adjudged after hearing by a United States District Court Judge as not warranting disbarment. Yet disbarment from practice before the New Jersey State Courts results in the total elimination of the Petitioner from the practice of law.

The Petitioner was held in contempt and imprisoned for four months for these same incidents. This Court upheld the contempt sentence though Petitioner was denied a hearing by the sentencing judge. Now the Petitioner has been disbarred from practice in New Jersey without a hearing.

These are extraordinary, indeed unprecedented events in the annals of the American Bar. And we believe that if the order for which review is sought is allowed to stand a precedent will have been established which would serve inevitably to lessen the availability of counsel for the group in our country which is presently experiencing the greatest difficulty in securing counsel, and to make hazardous the zealous defense of members of that group. Accordingly, in our view, a vital aspect of the constitutional guarantee of a fair trial is at issue.

As standards applied in disciplinary proceedings are of national concern to the Bar, and as this case raises at least one novel and significant constitutional issue not discussed by the Petitioner, we seek leave to present our views on that issue in the hope that by so doing we may assist this Court.

Brief Statement of Argument Intended to be Made

We intend to argue, if the Court grants leave to file a brief *amicus curiae,* that the action here under review in purpose and effect deprives litigants in political trials of the right under the Due Process Clause of the Fourteenth Amendment to the full and unfettered representation by

counsel, and the coordinate and implementing right under that same Clause of the Fourteenth Amendment for counsel to represent litigants without regard to the defendant's philosophy or political beliefs.

As legislation may be reviewed to determine its actual rather than its stated purpose (*United States* v. *Butler*, 297 U. S. 1; *Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20), so may the real import of judicial action be searched out, and particularly where civil rights and civil liberties are involved (see *Near* v. *Minnesota*, 283 U. S. 697, 708, 709).

In this case we believe, and if the application herein is granted, we will show, that the incidents which must be relied upon as the basis for this disbarment action are so few, isolated and insubstantial * as to lay no proper basis for the extreme penalty imposed; that consequently the action is arbitrary and probably attributable to the circumstance that the Petitioner chose to represent with vigor and diligence the leaders of the Communist Party charged with violation of the Smith Act; that an order of disbarment so based denies due process. Due to the difference in magnitude of punishment involved and the limited review allowed by this Court of the prior contempt order against the Petitioner and others, this issue was not previously considered.

We hold no brief for the Communist Party, its leaders, members, or objectives—but we do insist upon the right of any litigant charged with criminality, including leaders of the Communist Party, to a fair trial. And this right to a fair trial we think to be inextricably related to the guarantee that the counsel of such defendant will have every opportunity to represent the litigant as forcefully and aggressively as the needs of the case and reasonable propriety will demand and allow, *Powell* v. *Alabama*, 287 U. S. 45; *Avery* v. *Alabama*, 308 U. S. 444; *Hawk* v. *Olson*,

* See note 2, pages 10-11 of the Petition for Certiorari herein for a brief description of these incidents.

326 U. S. 271. No such assurance can be forthcoming to litigants unless counsel is, in turn, assured he will not be exposed to disbarment for the representation of a litigant in political trials upon the pretext of heated incidents which are inevitable in such trials.

We think that the coordinate rights of the litigant and the lawyer hereinabove set forth are both founded in the Due Process Clause of the Fourteenth Amendment and that both these rights are in grave jeopardy today. This jeopardy we think to be very seriously increased by the instant disbarment proceeding. As an association of lawyers greatly interested in preserving the rights of all to equal justice, we request the opportunity to submit a brief *amicus curiae* in the matter here under review.

CONCLUSION

It is respectfully requested that the National Lawyers Guild be granted leave to file a brief *amicus curiae* in support of the petition for writ of certiorari in this cause.

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